Concerning the respective rights of the remainderman and the lessee when the trust terminates, the authorities are not in accord. Where the trustee leases for an unreasonable term, the excess only will be void in equity, according to the principle that where a lease under a power is executed for a longer term than is authorized by the power, it is void only for the excess.[7] The excess will be void in equity, since the purchaser of a leasehold estate from a trustee is charged with constructive notice of the terms of the trust. But if the lease by a trustee is for a reasonable period, will the term drop if the trust comes to an end sooner than the term? The weight of authority seems to be that it will.[8] Many such holdings are based on a statute[9] whereby, when the trust ends, legal title passes forthwith from the trustee to the remainderman; for the courts argue that a trustee, like a tenant for life, cannot make a lease for years which will be valid after the termination of his estate. But whatever view be taken of a trustee's estate, whether the legal fee be determinable or absolute, there seems no reason to hold that, if he has an implied power to lease, the whole term is not valid. The validity should depend not on the extent of the trustee's legal estate, but on the extent of his power.[10]

WAIVER OF TRIAL BY JURY IN CRIMINAL CASES. — The apparent confusion on the question whether the issue of fact raised by a plea of not guilty may, with the consent of the parties, be tried by the court without a jury, seems to have arisen from the dicta of judges, who have propounded a doctrine of waiver of constitutional rights instead of construing the enacted law. It is believed that almost all the holdings in point may be reconciled by a scrutiny in each case of the constitutional and statutory provisions, and the grade of the offense. Where a constitution provides that there shall be no conviction except by verdict of a jury, the court alone cannot have jurisdiction of the issue,[1] and a statute permitting waiver of jury would seem invalid;[2] even minor offenses may have been within the intent of the enacting convention.[3] But most of the state constitutions merely declare that the right of trial by jury shall remain inviolate, or that the accused shall enjoy the right to a trial by jury, and under such provisions the courts have almost universally upheld statutes permitting waiver,[4] even in cases of felony.[5] In the absence of such statutes, however, the law of criminal procedure must be derived from the common law, and since at common law trial by jury prevailed exclusively, trial by the court is unauthorized and invalid.[6] A more common but much less sound explanation is that public policy, as dictated by the constitution, forbids waiver.[7] Neither of the

---

[7] Pawcy *v.* Bowen, 1 Ch. Cas. 23.
[8] Gomez *v.* Gomez, 147 N. Y. 195; Hutcheson *v.* Hodnett, 115 Ga. 990.
[9] N. Y. Laws, 1896, c. 547, § 89.
[10] *Cf.* Sugden, Powers, 722.

[1] State *v.* Holt, 90 N. C. 749.
[2] State *v.* Cottrill, 31 W. Va. 162. *Contra*, State *v.* Griggs, 34 W. Va. 78.
[3] See State *v.* Stewart, 89 N. C. 563.
[4] Edwards *v.* State, 45 N. J. L. 419. *Contra*, Brimingstool *v.* People, 1 Mich. N. P. 260.
[5] Murphy *v.* State, 97 Ind. 579; State *v.* Worden, 46 Conn. 349.
[6] See Harris *v.* People, 128 Ill. 585. *Contra*, Wren *v.* State, 70 Ala. 1.
[7] *Cf.* Cancemi *v.* People, 18 N. Y. 128.

arguments against waiver applies, however, to offenses of the sort which, at the time of the adoption of the constitution, were dealt with summarily by justices of the peace, or by courts of special sessions.[8] For these minor offenses, not being formerly triable by a jury, are usually considered not to have been intended to be within the constitutional guaranty,[9] and hence not to be within the scope of the alleged constitutional policy against waiver;[10] and there is sufficient precedent to give a court authorization in such cases to be the sole tribunal.

Moreover, a statute which provides that issues of fact shall be tried by a jury is held, in a recent case in a jurisdiction where the provisions of the Constitution of the United States apply, to prohibit waiver of jury. *In re McQuown*, 91 Pac. 689 (Okl.). Where there is such a statute there can be no other tribunal even for minor offenses unless further provision is made.[11] Without such statute the two sections of the Constitution involved,[12] construed together, have the force, not of those state constitutions which prescribe the exclusive use of trial by jury, but of those which merely protect the right to such trial.[13] Consequently a federal statute permitting waiver is constitutional;[13] and in a federal court, without such statute, a jury may be waived in the trial of a minor offence.[10]

The sole legal question, then, is always one of construction, not of policy. From the point of view of public policy, it may be said that waiver of jury trial conduces to efficient and expeditious criminal administration; but on the other hand, it endangers the existence of the jury system. A plea of guilty, not raising an issue to be tried, does not waive the right of trial by jury.[14] Nor are the above considerations applicable to the question whether a defendant may elect to be tried by a jury consisting of other than twelve men; a statute permitting waiver of the whole jury does not permit waiver of one juror.[15]

RECENT CASES.

BANKRUPTCY — EXEMPTIONS — CLAIM OF EXEMPTION OUT OF PROCEEDS OF SALE. — A bankrupt absconded leaving no property except a quantity of liquor. His wife waived her right to claim $500 worth of the liquor as exempt, but claimed in lieu thereof $500 from the proceeds of its sale. Her reason was that if she sold the liquor she would have to pay a tax which would reduce the value of her exemption to less than $200. *Held*, that she has a right to claim $500 from the proceeds. *In re Luby*, 155 Fed. 659 (Dist. Ct., S. D. Oh., E. D.).

By the great weight of authority statutes of exemption should be liberally construed. *Y. C. N. Bank* v. *Carpenter*, 119 N. Y. 550; *In re McManus*, 87 Cal. 292. Where a bankrupt makes an assignment for the benefit of creditors with a reservation of exemptions from the proceeds of the property assigned, the assignment is generally held not to be void as a fraud on the creditors. *Banking Co.* v. *Whitaker*, 110 N. C. 345; *contra*, *King* v. *Ruble*, 54 Ark. 418. Fur-

---

[8] City of St. Charles *v.* Hackman, 133 Mo. 634. *Contra*, State *v.* Maine, 27 Conn. 281.

[9] Murphy *v.* People, 2 Cow. (N. Y.) 815.

[10] Schick *v.* United States, 195 U. S. 65. But see dissenting opinion.

[11] Bond *v.* State, 17 Ark. 290. But see People *v.* Smith, 9 Mich. 193.

[12] Art. III, § 2; Amend. VI.

[13] Belt *v.* United States, 4 D. C. App. Cas. 25.

[14] West *v.* Gammon, 98 Fed. 426.

[15] Brown *v.* State, 16 Ind. 496. *Contra*, State *v.* Wells, 69 Kan. 792. *Cf.* 9 HARV. L. REV. 353.